No. 106

In the Supreme Court of the United States

OCTOBER TERM, 1944

THE UNITED STATES OF AMERICA, APPELLANT

v.

HERMAN ROSENWASSER, AN INDIVIDUAL, DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF PERFECT GARMENT COMPANY

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA

BRIEF FOR THE UNITED STATES

INDEX

CITATIONS

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OPINION BELOW.

No opinion was written by the District Court. The Court's formal order dismissing nine counts of the Information was entered April 13, 1944 (R. 21).

JURISDICTION

The petition for appeal was filed April 24, 1944 (R. 22), and an order allowing the appeal was entered the same day (R. 24). The jurisdiction of this Court is conferred by the Act of March 2, 1907, 34 Stat. 1246, as amended by the

Act of May 9, 1942, 56 Stat. 271, 18 U. S. C. Supp. III, sec. 682, commonly known as the Criminal Appeals Act, and section 238 of the Judicial Code, as amended, 28 U. S. C. sec. 345.[1] This Court, on June 12, 1944, noted probable jurisdiction and transferred the case to the summary docket (R. 26).

QUESTION PRESENTED

The sole issue before the Court is whether the Fair Labor Standards Act of 1938 applies to employees compensated on a piece rate basis.

STATUTE INVOLVED

The statute to be construed on this appeal is the Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U. S. C. Sec 201 *et seq.* (hereinafter

[1] The District Court's judgment (R. 22, *infra*, p. 4) discloses upon its face that it was based upon a construction of the Fair Labor Standards Act, upon which the information was founded. Under that interpretation the Act was regarded as inapplicable to employees who are compensated at piece work rates. Therefore there can be no doubt that this Court has jurisdiction. *United States* v. *Borden Co.*, 308 U. S. 188, 193–195; *United States* v. *Hastings*, 296 U. S. 188, 192–195; *United States* v. *Yuginovich*, 256 U. S. 450, 464; *United States* v. *Colgate & Co.*, 250 U. S. 300; *United States* v. *Patten*, 226 U. S. 525, 535, 540. Compare *United States* v. *Wayne Pump Co.*, 317 U. S. 200; *United States* v. *Swift & Co.*, 318 U. S. 442. The trial court's interpretation of the information, based upon a bill of particulars (*infra*, pp. 3–4), is not challenged and is binding upon this Court. *United States* v. *Borden Co.*, *supra*, at p. 193; *United States* v. *Hastings*, *supra*, at p. 192.

referred to as the "Act"). The pertinent Sections are printed in the Appendix, *infra*, pp. 17–20.

STATEMENT

This proceeding was instituted by an information filed January 25, 1944 (R. 1), charging, in fifteen separate counts, violations of the minimum wage, overtime, and record-keeping provisions of the Act.[2] Appellee, on March 3, 1944, demurred to the information, principally on the ground that it did not disclose whether the employees, with respect to whom the violations were alleged, were "employed and working at a regular rate of pay, subject to the provisions of the Act or working on a piece work basis at an irregular rate of pay" (R. 16, 17). In response to an order of the court, the Government on March 22, 1944 filed a bill of particulars (R. 20), which disclosed that the employees with respect to whom violations were al-

[2] The first five counts of the information charged the defendant with wilfully failing to keep proper records as required by Section 11 (c) and the regulations issued thereunder, contrary to Section 15 (a) (5). The sixth count charged wilful failure to pay the minimum wage fixed by a wage order of the Administrator, as required by Section 6 (a) (4) and contrary to Section 15 (a) (2). Counts seven to twelve, inclusive, charged wilful failure to pay overtime in accordance with Section 7 (a) (3), contrary to Section 15 (a) (2). Counts thirteen to fifteen charged the defendant with wilfully shipping in interstate commerce goods produced by employees who had not been paid in accordance with requirements of Section 6 and 7, contrary to Section 15 (a) (1).

leged in nine of the counts were piece rate workers.[3] The court sustained the defendant's demurrer with respect to these nine counts (R. 21) on the ground that the provisions of the Fair Labor Standards Act "do not apply to piece-rate workers" (R. 22). On April 13, the court entered a formal order which recited that the counts to which the demurrer was sustained "are insufficient in law to charge an offense under said [Fair Labor Standards] Act in that the provisions thereof do not apply to piece-rate workers" (R. 22). It was not disputed that production for interstate commerce is involved.

SPECIFICATION OF ERROR TO BE URGED

The District Court erred in ruling that the Fair Labor Standards Act is inapplicable to employees compensated at piece rates.

ARGUMENT

THE FAIR LABOR STANDARDS ACT APPLIES TO EMPLOYEES WHO ARE COMPENSATED AT PIECE RATE WAGES

The Fair Labor Standards Act provides in Section 6 (a) that "every employer shall pay to

[3] The bill of particulars showed that the employees with respect to whom violations were charged in three of the remaining counts were employed on an hourly or weekly wage basis. The other three counts charged violation of Section 15 (a) (1), the provision prohibiting shipment of goods produced in violation of the statutory wage and hour standards, and no particular employees were specified in these counts. The demurrer was overruled with respect to these six counts.

each of his employees" wages at not less than the prescribed minimum rates "an hour", and in Section 7 (a) that "no employer shall * * * employ any of his employees" for longer than specified hours in any week without paying overtime compensation "at a rate not less than one and one-half times the regular rate at which he is employed." No exception is stated with respect to employees compensated on a piece rate basis. It is evident from the expressed purposes and other provisions of the Act that no such exception was intended.

The statutory definitions of "employee" as including "any individual employed by an employer" (Sec. 3 (e)) and of "employ" as including "to suffer or permit to work" (Sec. 3(g)) are all-inclusive. The definition of "employee" includes "all employees" with specified exceptions (S. Rep. 884, 75th Cong., 1st sess., p. 6) and was authoritatively stated upon the floor of the Senate during the discussion of the fair labor standards bill to be "the broadest definition that has ever been included in any one act" (81 Cong. Rec. 7657). This Court has stated that it views "§§ 7 (a), 3 (g) and 3 (j) of the Act as necessarily indicative of a Congressional intention to guarantee either regular or overtime compensation for all actual work or employment." *Tennessee Coal Co.* v. *Muscoda Local*, 321 U. S. 590, 597. Certainly there is no basis in the language of the Act for con-

cluding that piece workers are not suffered or permitted to work in actual employment by an employer; and, if they are, the Act, by its terms applies to them.

The District Court stated no reason for regarding the Act as inapplicable, but apparently it concluded that the references to a minimum amount "an hour" in Section 6 of the Act and to "regular rate" in Section 7 precluded application of the Act to piece workers.* But this Court has recognized that, although neither Section 6 nor Section 7 of the Act speaks "specifically of any other method of paying wages except by hourly rate," nonetheless these provisions may be applied to employees not paid on an hourly basis; and this is true even though in a given case the wages actually paid, when reduced to an hourly basis, may fluctuate from week to week. *Overnight Motor Co.* v. *Missel*, 316 U. S. 572, 579, 580. This Court there had "no doubt that pay by the week, to be reduced by some method of computation to hourly rates, was also covered by the Act" (p. 579). The obvious method of computation to be employed is to divide the weekly wage by the number of hours worked. If the hourly rate varies from week to week because the same weekly wage is paid for irregular weekly hours, the rate

* The demurrer alleged, among other reasons, that the information failed to charge a crime because it did not allege that the employees "were employed and working at a regular rate of pay and subject to the Act" (R. 17).

is nevertheless "regular in the statutory sense, inasmuch as the rate per hour does not vary for the entire week" (*id.* at 580).

There is no reason to doubt that piece-rate pay should be translated into hourly pay by substantially the same method and that it comes equally within the scope of the statutory language. Taking this view, the Administrator of the Wage and Hour Division has stated that:

> Where an employee is employed on a piecework basis, his regular hourly rate of pay is computed by dividing the total weekly piecework earnings (including production bonuses, if any) by the number of hours worked in the week. For his overtime work the pieceworker is entitled to be paid a sum, in addition to his weekly piecework earnings, equivalent to one-half the regular hourly rate of pay multiplied by the number of hours worked in excess of 40 in the week. * * *[5]

This interpretation by the Administrator, expressing as it does "the view of those experienced in the administration of the Act and acting with the advice of a staff specializing in its interpretation and application," is persuasive. *Walling* v. *Hel-*

[5] Interpretative Bulletin No. 4 (originally issued November 1938), as revised, par. 8. For enforcement purposes, the Administrator has advised that he views payment of one and one-half times the applicable piece rate as substantial compliance with Section 7 under certain circumstances (provided of course this yields not less than the minimum wages required by the Act).

merich & Payne, Inc., No. 27, this Term, p. 4, n. 5 of slip report; *Overnight Motor Co.* v. *Missel, supra*, at pp. 580–581, n. 17. The foregoing method of calculating the regular hourly rate of piece workers has been followed in the courts. *Walling* v. *Reilly*, 7 Wage Hour Rept. 1026 (E. D. Pa., 1944); *Walling* v. *Harnischfeger Corp.*, 54 F. Supp. 326 (E. D. Wis.) (appeal pending, C. C. A. 7); *Walling* v. *Black Diamond Coal Mining Co.*, 6 Wage Hour Rept. 1283 (W. D. Ky., 1943); *Walling* v. *Blue Mountain Logging Co.*, 6 C. C. H. Labor Cas. par. 61,466 (W. D. Wash., 1942); *Holland* v. *U. S. Bedding Co.*, 5 Wage Hour Rept. 262 (W. D. Tenn., 1942).

Even if emphasis be placed upon the references to hourly pay in the language of the applicable sections of the Act, the inclusion of piece workers is not precluded. The requirement of Section 6 is that wages be "at the rates" prescribed, which at present are "not less than 30 cents an hour." Section 7 requires that overtime compensation be paid "at a rate not less than one and one-half times the regular rate * * *." This language does not impose a requirement that employees be paid on an hourly basis, but refers to the level of compensation whatever may be the method of determining payments. With reference to piece rates this Court has pointed out that although the legislative history "is inconclusive as to the intended meaning of the words [in Section 7(a)

'the regular rate at which he is employed' ", the omission of the word "hourly" which had modified "rate" in the quoted phrase in an earlier draft of the bill, may have occurred because it is "not descriptive of piecework or salary payments," *Missel* case, *supra*, at pp. 579–580. Nothing in the language of the Act suggests that this conclusion of the Court is unsound or that piece rates were not intended to be covered.

The evils which Congress sought to eliminate by the enactment of the Act permit of no distinction between employees paid on a time basis and those paid at piece rates. Although the legislative history of the Act contains no specific statement that low piece-work wages were among the substandard wages sought to be corrected, they clearly were intended to be included insofar as they prevailed. They, not less than low hourly wages, might produce "wages too low to buy the bare necessities of life." They might, also, accompany "long hours of work injurious to health." S. Rep. No. 884, 75th Cong., 1st sess., p. 4. All methods of wage payment may equally be subject, "as a matter of economic fact, to the evils the statute was designed to eradicate." See *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 127. The exclusion of piece rate workers from the Act would to that extent frustrate the declared policy of Congress to eliminate, as "an unfair method of competition in commerce" which leads to labor disputes and interferes with the orderly and fair market-

ing of goods, "labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers" (Section 2). Such a construction would carry to an extreme a narrow, grudging method of interpretation which this Court has held to be inappropriate to the Act. *Tennessee Coal Co.* v. *Muscoda Local*, 321 U. S. 590, 597.

In actual fact thousands of workers in the manufacturing, mining, and other industries subject to the Act were and are paid at piece work rates,* and thousands more according to premium

*The following table, based upon recent studies, shows the percentage of workers paid on a straight piece rate basis in certain of the industries subject to the Act and the approximate number of wage earners in those industries:

Industry	Year of study	Proportion paid on basis of straight piece rate	Number of wage earners 1939
Boot and shoe	1939	80.7%	228,028
Boot and shoe cut stock and findings	1939	40.1%	18,845
Hosiery:			
Full-fashioned	1938	Large majority	97,200
Seamless	1938	Large majority	61,852
Knit goods (other than hosiery):			
Knitted underwear	1938	53.8%	38,536
Knitted outerwear	1938	49.7%	22,549
Hat industries:			
Fur felt	1939	57.7%	9,938
Wool felt	1939	39.9%	4,421
Gloves	1941	51.2%	12,297
Cigar	1940	About ¾	50,897
Furniture	1941	Over ½	177,535
Leather	1939	38.5%	41,795
Meat packing	1937	4.4%	120,493

The figures giving the numbers of wage earners in the foregoing table are from the United States Bureau of the Census,

or bonus systems which are variations of the piece rate method.[7] In many of the industries in which piece rate and incentive systems are prevalent,

Census of Manufactures, 1939. The remaining information is drawn from the following publications of the United States Department of Labor, Bureau of Labor Statistics: *Earnings and Hours in the Boot and Shoe and Allied Industries During First Quarter of 1939*, Bull. 670 (p. 10 for boots and shoes, p. 59 for boot and shoe cut stock and findings); *Earnings and Hours in the Hosiery Industry, 1938*, Serial No. R–955 (p. 9 for full-fashioned, p. 34 for seamless); *Hourly Earnings in Knit Goods Industries (Other Than Hosiery), September 1938*, Serial No. R–1033 (p. 7 for Knitted Underwear, pp. 18–19 for Knitted Outerwear); *Earnings and Hours in the Fur-Felt, Wool-Felt, and Straw Hat and Hat Materials Industries, 1939*, Bull. 671 (p. 9 for fur felt hats, p. 19 for wool felt hats); *Earnings and Hours in the Glove Industry, July 1941*, Bull. 702, p. 13; *Hours and Earnings in the Cigar Industry, 1940*, Serial No. R–1387, pp. 5–6; *Hourly Earnings in the Furniture Industry, 1941*, Serial No. R. 1330, p. 4; *Earnings and Hours in the Leather and Leather Belting and Packing Industries, 1939*, Bull. 679, p. 15 for leather; *Earnings and Hours in the Meat-Packing Industry, 1937*, Serial No. R–1016, p. 7.

[7] Studies made in 1935, covering a cross-section of industry including 631 manufacturing establishments employing 700,699 wage earners indicated that 43.7 percent were employed upon a piece rate or other incentive basis, 22.1 percent at straight piece rates and an additional 21.6 percent on some premium or bonus system. The over-all percentage compensated on an incentive basis was practically the same as had been indicated by a survey conducted in 1924 (see *Financial Incentives, National Industrial Conference Board Studies No. 217*, Table I, p. 17).

A study by the National Industrial Conference Board in 1939 (*National Industrial Conference Board, Studies in Per-*

substandard wages were widespread at the time of the enactment of the Act.[7] Piece rates and premium or bonus systems are used interchangeably or simultaneously with the time basis of pay in most of these industries; in many such industries both time workers and piece workers are

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sonnel Policy, No. 19, Some Problems in Wage Incentive Administration), showed that 61.6 percent of the workers in 300 companies studied were paid according to an incentive system (p. 11, Table 4).

[8] The following table is illustrative:

Industry	Percent earning less than 25 cents an hour	Percent earning less than 30 cents an hour
Boots and shoes (unskilled)		32
Knitted outerwear (unskilled)	13.9	58.1
Knitted underwear (unskilled)	22.8	41
Seamless hosiery (unskilled)	29.3	48.5
Full-fashioned hosiery (unskilled)	17.4	28.5
Work and knit gloves	26.5	39

The sources of the above information are the following publications of the United States Department of Labor:

Earnings and Hours in Shoe and Allied Industries During First Part of 1939, Bureau of Labor Statistics Bull. 670, p. 13; *Hourly Earnings in Knit Goods Industries (other than hosiery), September 1938*, Bureau of Labor Statistics Serial No. R-1033, p. 9 for underwear, p. 20 for outerwear; *Earnings and Hours in the Hosiery Industry, 1938*, Bureau of Labor Statistics Serial No. R-955, p. 12 for full-fashioned, p. 36 for seamless; *Hours and Earnings in Certain Men's Wear Industries*, Women's Bureau Bull. 163-6, p. 16 (work and knit gloves).

See also *Walling* v. *T. Buettner & Co.*, 5 Wage Hour Rept. 279 (N. D. Ill., 1942), *infra*, p. 15, and *Walling* v. *American Needlecrafts*, 139 F. (2d) 60 (C. C. A. 6), in which the piece work rates involved, which were paid for homework, yielded approximately 10 cents an hour.

found in practically every occupation.[9] It would run counter to the expressed purpose of Congress to conclude that the benefits of the Act are withheld from piece workers engaged in the same occupations as covered employees who are paid by the hour for the same work, when the same evils of substandard wages and long hours prevail with respect to the former as with respect to the latter. A decision that the Act is inapplicable to piece workers would provide employers, particularly where employees are unorganized or otherwise in a weak bargaining position, with a simple means of avoiding the Act by changing from a time basis of pay to a piece work basis. Wholly unfair and unwarranted competitive advantages would quickly arise, and the effectuation of the objectives of the Act would be seriously impaired.

For all of the foregoing reasons we think it is obvious that the Act was intended to apply to piece workers. The Administrator has so construed it from the beginning,[10] and no court here-

[9] United States Department of Labor, Bureau of Labor Statistics, *Effect of Incentive Payments on Hourly Earnings*, Bulletin 742 (Reprinted from the Monthly Labor Review, May 1943), Table I, pp. 4–5. See, e. g., *Holland* v. *U. S. Bedding Co.*, 5 Wage Hour Repf. 262 (W. D. Tenn., 1942): "The work is done on day basis and on what is called piece work basis; and these employees sometimes do both day work and piece work".

[10] In Interpretative Bulletin No. 1, originally issued October 12, 1938, almost two weeks before the effective date of the Act; the Administrator announced that "The Act is not limited to employees working on an hourly wage. The re-

tofore has ever doubted this interpretation. It has been assumed in numerous decisions that piece workers are not exempt, and violations with respect to them have been dealt with accordingly. *Walling* v. *Bonifas-Gorman Lbr. Co.*, 7 Wage Hour Rept. 1039 (W. D. Mich., 1944); *Walling* v. *Reilly*, 7 Wage Hour Rept. 1026 (E. D. Pa., 1944); *Walling* v. *Livernois*, 50 F. Supp. 978 (E. D. Mich.); *Walling* v. *Black Diamond Coal Mining Co.*, 6 Wage Hour Rept. 1283 (W. D. Ky., 1943); *Domenech* v. *Cities Delivery Express*, 5 Wage Hour Rept. 562 (D. P. R., 1942); *Walling* v. *Blue Mt. Logging Co.*, 6 Labor Cas. (C. C. H.), par. 61,466 (W. D. Wash., 1942). The cases cited *supra*, p. 8, with reference to the method of calculating the regular rate of pay for overtime purposes under the piece work plan recognize affirmatively that the statute applies to workers who are paid by the piece." Several recent decisions hold that homeworkers, paid by the piece, are covered. See *Walling* v. *American Needlecrafts*, 139 F. (2d) 60 (C. C. A. 6); *Fleming* v. *Demeritt Co.*, 56

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quirement of Section 6 * * * is that the employees must be paid *at the rate* of not less than 25 cents an hour * * *. This does not mean that employees cannot be paid on a piece-work basis. * * *; it merely means that whatever the basis on which the workers are paid, whether it be monthly, weekly, or on a piece-work basis, they must receive at least the equivalent of the minimum hourly rate." This language is now par. 8 of the revision of December 1940.

See also Interpretative Bulletin No. 4 (originally issued November 1938), par. 8, *supra*, p. 7, footnote 5.

F. Supp. 376 (D. Vt.); *Walling* v. *T. Buettner & Co.*, 5 Wage Hour Rept. 279 (N. D. Ill., 1942), reversed on another ground, 133 F. (2d) 306 (C. C. A. 7), certiorari denied, 319 U. S. 771; *Wagner* v. *Estate of Abe Field*, 4 Wage Hour Rept. 329 (Super. Ct., Allen County, Ind., 1941). In the *American Needlecrafts* case it is pointed out that Section 6 (a) (5) of the Act, which makes special provision for the establishment of minimum piece rates for homework in Puerto Rico and the Virgin Islands, is evidence of the general intent of Congress to include workers of this type within the Act. The court in *Fleming* v. *Demeritt Co.* notes the failure in 1939 of several attempts to amend the Act to permit the authorization of lower piece work wages and longer hours for homework than prevail generally under the Act, and stresses the uniform acknowledgment in Congress during the discussion that the statutory standards apply in the absence of such an amendment.[11] This Congressional understanding with respect to the meaning of the Act so soon after its adoption is, we submit, convincing evidence of its proper interpretation. If homeworkers, paid by the piece, are covered, other piece workers almost necessarily must be also.

[11] Amendments dealing specifically with wage orders applicable to Puerto Rico and the Virgin Islands were adopted in the Act of June 26, 1940, c. 432, Sec. 3, 54 Stat. 615.

CONCLUSION

The judgment of the District Court should be reversed.

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NOVEMBER 1944.

APPENDIX

The pertinent provisions of the Fair Labor Standards Act of June 25, 1938, c. 676, 52 Stat. 1060, 29 U. S. C. Sec. 201 *et seq.*, are as follows:

* * * * *

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.

(b) It is hereby declared to be the policy of this Act, through the exercise by Congress of its power to regulate commerce among the several States, to correct and as rapidly as practicable to eliminate the conditions above referred to in such industries without substantially curtailing employment or earning power.

* * * * *

SEC. 3. As used in this Act—

(a) "Person" means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons.

* * * * *

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(e) "Employee" includes any individual employed by an employer.

* * * * *

(g) "Employ" includes to suffer or permit to work.

* * * * *

SEC. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—

(1) during the first year from the effective date of this section, not less than 25 cents an hour,

(2) during the next six years from such date, not less than 30 cents an hour,

(3) after the expiration of seven years from such date, not less than 40 cents an hour, or the rate (not less than 30 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, whichever is lower, and

(4) At any time after the effective date of this section, not less than the rate (not in excess of 40 cents an hour) prescribed in the applicable order of the Administrator issued under section 8, * * *

* * * * *

SEC. 7. (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

(1) for a workweek longer than forty-four hours during the first year from the effective date of this section,

(2) for a workweek longer than forty-two hours during the second year from such date, or

(3) for a workweek longer than forty hours after the expiration of the second year from such date,

unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

* * * * *

SEC. 11. * * *.

* * * * *

(c) Every employer subject to any provision of this Act or of any order issued under this Act shall make, keep, and preserve such records of the persons employed by him and of the wages, hours, and other conditions and practices of employment maintained by him, and shall preserve such records for such periods of time, and shall make such reports therefrom to the Administrator as he shall prescribe by regulation

or order as necessary or appropriate for the enforcement of the provisions of this Act or the regulations or orders thereunder.

* * * * *

SEC. 15. (a) After the expiration of one hundred and twenty days from the date of enactment of this Act, it shall be unlawful for any person—

(1) to transport, offer for transportation, ship, deliver, or sell in commerce, or to ship, deliver, or sell with knowledge that shipment or delivery or sale thereof in commerce is intended, any goods in the production of which any employee was employed in violation of section 6 or section 7, or in violation of any regulation or order of the Administrator issued under section 14; except that no provision of this Act shall impose any liability upon any common carrier for the transportation in commerce in the regular course of its business of any goods not produced by such common carrier, and no provision of this Act shall excuse any common carrier from its obligation to accept any goods for transportation;

(2) to violate any of the provisions of section 6 or section 7, or any of the provisions of any regulation or order of the Administrator issued under section 14;

* * * * *

(5) to violate any of the provisions of section 11 (c), or to make any statement, report, or record filed or kept pursuant to the provisions of such section or of any regulation or order thereunder, knowing such statement, report, or record to be false in a material respect.

* * * * *

SEC. 16. (a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. No person shall be imprisoned under this subsection except for an offense committed after the conviction of such person for a prior offense under this subsection.

* * * * * *

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